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REMARKS

I. Petition for Extension of Time

Applicants herewith petition the Commissioner for Patents to extend the time for response to the Office Action mailed 13 May 2008 for two (2) months from 13 June 2008 to 13 October 2008. However, since 13 October 2008 fell on a Federal holiday, the required action may be taken on the next succeeding business day which is not a Saturday, Sunday or Federal holiday. (37 C.F.R. §1.7). Accordingly, this Amendment filed today on 14 October 2008 is considered timely within the two-month extended period for responding to the Office Action.

Authorization is given to charge the extension of time fee of \$490.00 (37 C.F.R. §1.136 and §1.17) to Deposit Account No. 23-1703. Any deficiency or overpayment should be charged or credited to the above numbered deposit account.

II. Disposition of Claims

Claims 1, 2, 5-9 and 15-18 are pending. Claims 17-18 are withdrawn from consideration in view of the restriction requirement of record. Claims 1, 2, 5-9, 15 and 16 are rejected.

III. Claim Rejections – 35 U.S.C. §112

Claims 15 and 16 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claim 15 is directed to a surgical kit comprising the apparatus as claimed in any one of claims 1, 2 or 5-9. Claim 16 is dependent on claim 15.

The Examiner alleges that the term "surgical kit" as recited in claim 15 adds no structural or functional limitation to the claim.

In view of the Filing Receipt, it appears that claim 15 was treated as an independent claim for fee calculation purposes. Furthermore, kit claims 15-16 (Group II) and apparatus claims 1, 2 and 5-9 (Group I) were treated as separate and distinct inventions to support the restriction requirement of record.

Accordingly, the requirements of a proper dependent claim as set forth in 35 U.S.C. §112, fourth paragraph, do not apply to independent claim 15. As such, claim 15 is not required

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to "specify a further limitation" to the apparatus of claims 1, 2 and 5-9. Rather, claim 15 is directed to a surgical kit which comprises the apparatus of claims 1, 2 or 5-9.

For all of the foregoing reasons, Applicants respectfully submit that there is no indefiniteness in view of the file wrapper. Withdrawal of the § 112 is requested.

IV. Claim Rejections – 35 U.S.C. §102

Claims 1, 2, 5-9, 15 and 16 are rejected under 35 U.S.C. §102(b) as being anticipated by US 5,643,290 to Clark et al. ("Clark").

Clark discloses a ring loader device for expanding an elastic cincture band. The device comprises a cone component having a conical shaped pyramid with vertical grooves. The device further comprises a corresponding dome component having matable ribs which are received in the cone grooves. In practice, the ribs enter the grooves and align the cone and dome as they are matably pressed together. (See Abstract).

Anticipation requires that a single reference disclose, either expressly or inherently, each and every feature of the claimed invention.

Claim 1 expressly recites that the arms of the expander device 24 taper in a radial direction towards the center. This aspect of the claimed invention is described by the written specification at page 10, lines 16-23, and illustrated by Figures 9-12. Specifically, the expander device 24 of the claimed invention has spaced apart arms 26 mounted at their rear ends to the circumference of the forward end of a tube 28. As the arms 26 converge from the circumference of the tube 28, the forward ends 30 taper, i.e., diminish or decrease in range, in a radial direction toward the center. The purpose of this structure is to facilitate the mating and slidable engagement of the spaced-apart arms 26 of the expander device 24 between the fingers 22 of the adaptor 14.

In contrast to the expander device of the claimed invention, the dome component disclosed by Clark has ribs 92, 94, 96 and 98 which are connected within the interior of a cap or hat shaped device 90. The matrix of such ribs are said to support the dome component while also initiating and maintaining alignment of the dome and cone component (col. 9, lines 49-60). As illustrated by Figures 5A, each of ribs 92, 94, 96 and 98 has an angled lower surface or leading edge 100, 102, 104 and 106 which engages and propels the elastic ring on the cone outer

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surface as the dome and cone are mated. The edges of ribs 92, 94, 96 and 98 may intersect to form an "X" key 108 which may be mated with a corresponding "X" keyhole formed in the end 68 of the cone component (col. 9, lines 61 to col. 10, line 1).

Firstly, Clark does not disclose (a) the structure of the spaced-apart arms 26 of the expander device 24 of the claimed invention. Ribs 92, 94, 96 and 98 and leading edge 100, 102, 104 and 106 disclosed by Clark do not taper, i.e., diminish or decrease in range, in a radial direction toward the center as contemplated by the claimed invention (See Figs. 9-12).

Secondly, Clark does not disclose the cooperation of the spaced-apart arms 26 of the expander device 24 with the fingers 22 of the adaptor 14. The "tapering" structure of the spaced-apart arms 26 of the expander device 24 permits the spaced-apart arms 26 to easily and reliably slide between the fingers 22 of the adaptor 14. In contrast, Clark's arrangement requires a more careful and deliberate lining-up of ribs 92, 94, 96 and 98 and leading edge 100, 102, 104 and 106 with slots 60, 62, 64 and 66 of the cone. Moreover, mating of cone and dome is complicated even further by the positioning of ribs 92, 94, 96 and 98 within the interior of cap 90. The cap is sure to make it difficult to line up narrow ribs with narrow slots. Poor visibility coupled with the requirement of accurately mating ribs and slots increases the likelihood of operator error, breakage of the elastic ring 18, entanglement of the elastic ring 18 between the cone, dome and/or cap and damage to the ring loader device itself.

For all of the foregoing reasons, Clark fails to anticipate the claimed invention. Withdrawal of the §102 rejection is requested.

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CONCLUSION

Applicants have made a good faith attempt to respond to the Office Action. It is respectfully submitted that claims 1, 2, 5-9, 15 and 16 are in condition for allowance, which action is earnestly solicited.

Any fees due in connection with this response should be charged to Deposit Account No. 23-1703.

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Respectfully submitted,



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